

Exhibit 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE

ALVIN GALUTEN, on behalf of)
the Estate of HORTENSE)
GALUTEN,)
)
Plaintiff,)
)
vs.) No. 3:18-CV-00519
)
WILLIAMSON COUNTY HOSPITAL) Judge Eli Richardson
DISTRICT, d/b/a WILLIAMSON)
MEDICAL CENTER; and FIRST) Magistrate Judge Holmes
CALL AMBULANCE SERVICE, LLC,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF

ALVIN GALUTEN

Taken on Behalf of the Defendants

July 29, 2019

Commencing at 9:03 a.m.

Reported by: Ann E. Ramage, RPR, LCR
Tennessee LCR No. 372
Expires: 6/30/2020

1 APPEARANCES:

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9 District, d/b/a Williamson Medical Center:

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19 Also Present: Nanette Todd

20 Mazie Bryant, Intern

21 Harrison Pasley, Videographer

1 The videotaped deposition of ALVIN
2 GALUTEN was taken on behalf of the Defendants on
3 July 29, 2019, in the offices of Gideon, Cooper &
4 Essary, PLC, 315 Deaderick Street, Suite 1100,
5 Nashville, Tennessee, for all purposes under the
6 Federal Rules of Civil Procedure.

7 The formalities as to notice, caption,
8 certificate, et cetera, are waived. All objections,
9 except as to the form of the questions, are reserved
10 to the hearing.

11 It is agreed that Ann E. Ramage, being
12 a Notary Public and Court Reporter for the State of
13 Tennessee, may swear the witness, and that the
14 reading and signing of the completed deposition by
15 the witness are reserved.

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1 INDEX
2 INDEX OF EXAMINATIONS
3 Page

4 By Mr. Essary5

6 INDEX OF EXHIBITS
7 Page

8 (No exhibits marked)
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1 PROCEEDINGS

2 VIDEOGRAPHER: We are now on the
3 record. The time on the monitor is 9:03 a.m.
4 Today's date is July 29th, 2019. This marks the
5 beginning of Disk 1 of the video deposition of Alvin
6 Galuten.

7 Would counsel please introduce
8 yourselves and state whom you represent.

9 MR. LEMOND: Franklin Lemond on behalf
10 of Dr. Galuten and the Estate of Hortense Galuten.

11 MR. ESSARY: I'm Bryan Essary on behalf
12 of Williamson Medical Center.

13 MS. TODD: Nanette Todd, risk manager
14 for Williamson Medical Center.

15 VIDEOGRAPHER: Would the court reporter
16 please swear in the witness.

17 ***

18 ALVIN GALUTEN
19 was called as a witness, and after having been first
20 duly sworn, testified as follows:

21 EXAMINATION

22 BY MR. ESSARY:

23 Q If you would, sir, please state your name
24 for the record.

25 A Alvin Galuten.

(Pages 2 to 5)

1 facility or skilled nursing facility. I'm trying to
2 figure out when that happened in relation to
3 discharge.

4 A I can't tell you what day, but it would have
5 been more than two or three days prior because it
6 took time to get a room in these facilities. She
7 said that some of the good facilities don't have
8 just openings. So you've got to -- we've got to
9 make arrangements ahead of time to make sure that
10 they will take her, that they have an opening for
11 her.

12 Q Do you remember the name of the person, this
13 young lady who met with you and maybe met with you
14 and your wife to discuss the options for the
15 facility?

16 A I do not remember the name, no, sir.

17 Q Karen Durick, does that sound correct or
18 sound right?

19 A I wouldn't know the name. White female I
20 remember.

21 Q Even though you don't remember her name, did
22 you understand she was a case manager?

23 A I didn't know that was her title, no, but I
24 knew that she was helping us in deciding where was
25 best facilities locally available.

1 A She went -- Carol was there with me.

2 Q Okay. So both of you together?

3 A Yeah. And I'm not sure if we both went to
4 other ones or not. We might have, but I know that
5 she took -- she was good. She steps up and does
6 right.

7 Q And when you all made these visits or the
8 visit to Somerfield, did you all communicate back to
9 this lady at the hospital, that was your choice?

10 A Yeah. When we narrowed it down, that was
11 the one. That was the first choice. We had to
12 give -- we had to give her a list of, I think, of
13 more than one choice.

14 Q In case there were no available beds?

15 A Right.

16 Q All right. And so that would be a, I think
17 you said, two or more days before your mother left
18 the hospital?

19 A I would think at least that. I don't
20 remember for certain, but it took some time to get a
21 guaranteed spot available.

22 Q Sure. And do you remember how your mother
23 was doing during this discussion about where she was
24 going to go?

25 A How --

1 Q You understood her role, whatever her title
2 was, whatever her name was, her job -- her role
3 seemed to be trying to find a skilled nursing
4 facility or rehab facility for your mother to
5 transition or be transferred to from the hospital?

6 A Yes, sir.

7 Q Initial meeting, it sounds like she gave you
8 information about a number of facilities?

9 A (The witness moves head up and down.)

10 Q Yes?

11 A Yes.

12 Q With some recommendations?

13 A Yes, sir.

14 Q Did you all go and look at any of these
15 facilities?

16 A I believe my wife went to look at some of
17 them during the day while I was -- I don't -- I
18 went to -- I went to -- I went to at least one with
19 Carol. I don't remember going to other ones. I
20 believe she may have gone to other ones without me,
21 but I don't remember for sure.

22 Q Which facility did you visit?

23 A I went to Somerfield.

24 Q Is that the one your wife went to, too, or,
25 also?

1 Q Physically or mentally, or medically, how
2 was she doing during those two or three days?

3 A Well, mentally, she still was severely
4 delirious, not improved. Physically, I was told she
5 was doing wonderful or at least was fine.

6 Q Now, in fairness, I suspect they were not
7 saying wonderful or fine, but she was improving?

8 A Well, her labs were wonderful.

9 Q Improving from the earlier labs?

10 A They were still -- no, because they said
11 that she had basically gone back to wonderful,
12 excellent, whatever, good lab results. Those were
13 fine. Physically, I didn't examine her any longer.
14 They said there was nothing new and everything was
15 fine with that. And I knew that, mentally, she was
16 not anywhere near baseline, nor really improved from
17 her admission, unfortunately.

18 Q Okay. So what we're talking about then is,
19 physically, reports were given to you from the
20 hospitalist as to how she was doing?

21 A Right.

22 Q You did not do any further evaluations or
23 examinations of her --

24 A Right.

25 Q -- during this two- or three-day window

Page 218

1 leading up to transfer?
 2 A Right.
 3 Q Did you review any of her labs leading up to
 4 transfer?
 5 A I did not, but I was -- they were shared
 6 with me verbally by the hospitalist.
 7 Q The hospitalist. So it sounds like if
 8 Dr. Benson -- from what you have told us, it sounds
 9 like Dr. Benson would have been the one
 10 communicating with you each day leading up to
 11 transfer, slash, discharge because he was the one
 12 working those days and you did not see the night
 13 hospitalist.
 14 A Right.
 15 Q Okay. And it was -- your impression from
 16 Dr. Benson's conversations with you was she was
 17 progressing to the point where he thought she could
 18 be discharged or transferred?
 19 A He said that she would be discharged -- she
 20 would be transferred, whatever, tomorrow morning or
 21 this morning, whatever.
 22 Q Whatever the date it was?
 23 A (The witness moves head up and down.)
 24 Q Yes?
 25 A Yes. He said that she would be transferred

Page 219

1 there. And, again, the morning of the transfer, he
 2 said everything was fine in terms of labs were good
 3 and there was nothing new, physical exam or anything
 4 else.
 5 Q Well, even though you did not do a physical
 6 exam or review any of her labs during the day or so
 7 leading up to the morning of discharge, including
 8 the morning of discharge, from your observations,
 9 did you note any changes in her condition?
 10 A I did not note anything physically, but she
 11 didn't vomit for me while I was there, which she
 12 obviously did for the hospitalist while they were
 13 there. She did -- she wasn't obviously hypoxic when
 14 I was there. I didn't note -- but I wasn't -- I
 15 didn't notice her PO2s, but I wasn't really -- I
 16 don't remember paying attention to it then.
 17 Q Was she on a continuous pulse oximeter?
 18 A I believe she was.
 19 Q If you're -- if you're in the room and it
 20 alarms, was it your custom to look and see what PO2
 21 saturations were?
 22 A Well, it doesn't -- it only goes to a
 23 certain cutoff. I'm not sure what they had it set
 24 at in terms of the cutoff.
 25 Q Sure. And whatever the cutoff is, the

Page 220

1 alarms then sounded, true?
 2 A But I'm saying -- but you set the cutoff.
 3 You decide what the cutoff is going to be. So I can
 4 make the PO2 go off if it's anything below 100, or I
 5 can make it go off if it goes off anything below 90
 6 or anything below 85. So you can change the
 7 cutoffs.
 8 Q Sure. It could be all the way down to 50?
 9 A Right.
 10 Q But you're not telling us that the pulse
 11 oximeter or the monitor in her room was set anything
 12 below what it normally would be set, are you?
 13 A Well, I'm not sure what it was set at, I'm
 14 saying. I have no idea what it was -- what we
 15 set -- you're asking when the alarm would go off. I
 16 don't know what they had the alarm numbers set at.
 17 Q Well, if alarms go off in her room, do you
 18 usually look and see what the monitor readings are?
 19 A I would think I would usually, if I was
 20 awake.
 21 Q When you stayed with her over in the
 22 evening, did you sleep?
 23 A At times, I fell asleep.
 24 Q Was there a couch or a reclining chair in
 25 her --

Page 221

1 A They often gave me a reclining chair.
 2 Q In the evening of the 10th into the morning
 3 of the 11th, did you stay the entire evening?
 4 A Which was -- the 11th is the discharge date?
 5 Q Yes, sir.
 6 A I had to leave to drive my wife to the
 7 airport on the early, early morning, like 3:00 in
 8 the morning, to go babysit some grandkids in
 9 California. So I left at around 3:00 in the
 10 morning, everything. And then drove to the airport,
 11 then went home and got something to eat, took care
 12 of the animals and then went to sleep for a little
 13 while and then came back in for the morning rounds
 14 at 8:00 a.m.
 15 Q So it's your testimony that between
 16 3:00 a.m. and 8:00 a.m., you were not at the
 17 hospital?
 18 A Yes. So it was around that time I was out
 19 -- I had not -- I was not present.
 20 Q And you returned sometime around 8:00 a.m.?
 21 A I think the morning rounds. I made sure I
 22 was back in time for morning rounds which were
 23 usually around 8:00 a.m.
 24 Q And who was going out of town?
 25 A My wife.

(Pages 218 to 221)

Page 222

- 1 Q And what flight was she taking at 3:00 in
2 the morning?
3 A To California from Nashville. So I had to
4 get her there however many hours before she wants to
5 get there. So if you drive at 3:00, you get there
6 at 3:30, whatever, and then she has to be there an
7 hour and a half before the boarding. So I'm not
8 sure if it left at 5:00 or what, but I left at 3:00
9 to get her to the airport.
10 Q 3:00 a.m.?
11 A Yes, sir. Because I had to pick her up and
12 then --
13 Q All right. Did you understand that your
14 mother was going to be discharged -- I say
15 discharged, but transferred to Somerfield on the
16 morning of November -- I'm sorry, June 11, 2016?
17 A I knew she was going to be transferred that
18 day, yes, sir.
19 Q So it sounds like what happened is,
20 3:00 a.m. -- I'm sorry, around 3:00 a.m., you left
21 the hospital, did what you say you did, got back
22 about 8:00 a.m.?
23 A Yes, sir.
24 Q How long did you stay when you returned?
25 A I stayed through morning rounds.

Page 224

- 1 Q And how long did she experience congestive
2 heart failure?
3 A Well, prior to her admission, never.
4 Q During the hospitalization?
5 A Throughout her hospitalization.
6 Q Did she still have congestive heart failure
7 at the time of discharge?
8 A She still had pleural effusion at the time
9 of discharge according to the report. And I believe
10 the report said congestive heart failure on the last
11 day of her discharge.
12 Q On the last day of her discharge, was that
13 June 10 or June 11?
14 A The morning. So, again, there was an
15 abdominal radiograph ordered at about -- I think in
16 terms of order or done sometime around 4:00 a.m.,
17 and a chest x-ray that same day done around 7:00 or
18 so, a.m.
19 Q And, again, you have not read the --
20 actually reviewed the imaging, but you have reviewed
21 the report from the chest x-ray done on June 11,
22 2016; is that right, sir?
23 A Right. It's been years since I looked at
24 the actual images.
25 Q So preparing for today, you haven't looked

Page 223

- 1 Q How long was that? How long did you stay?
2 Was it 15 minutes, an hour, two hours?
3 A However long the morning rounds took for
4 them to discuss with me my mom and then I left.
5 Q Give us an estimate if you would, please,
6 sir.
7 A I don't know if they saw her first, second,
8 third, fourth, if there were other things important
9 going on ahead of her, but I waited for the
10 hospitalist to come and discuss my mom's case in
11 terms of what happened last evening and then I went
12 home.
13 Q You just cannot tell us what time you left
14 the hospital to go home; is that true?
15 A Yes, sir, I cannot tell you.
16 Q Even though you cannot tell us what time you
17 left, did you speak with Dr. Benson that morning?
18 A Yes, sir.
19 Q Earlier you said your mother, during this
20 hospitalization, experienced congestive heart
21 failure?
22 A During it, yes, sir.
23 Q When was that?
24 A After she went into renal failure, she
25 developed congestive heart failure.

Page 225

- 1 at it?
2 A No, sir.
3 Q You looked at the report last night, though?
4 A I did see the report.
5 Q You don't remember what it said?
6 A I just remember seeing the history, hypoxia.
7 Q And why -- do you know when your mother
8 experienced hypoxia in the evening of the 10th into
9 the morning of the 11th?
10 A I do not.
11 Q By definition, hypoxia is what, an oxygen
12 saturation below 90?
13 A It's a low -- well, people use different
14 numbers, but, yeah, low oxygen. Some people use the
15 word "hypoxia" in lieu of shortness of breath.
16 Q What is your definition of hypoxia?
17 A I don't use hypoxia because I don't do pulse
18 oximetry as a radiologist.
19 Q When you see that on a radiology --
20 requisition for a radiology report when you were
21 practicing, it said hypoxia, what did that mean to
22 you?
23 A That the patient was short of breath and had
24 some defined oxygen level below which --
25 Q Whatever the parameters were?

(Pages 222 to 225)

Page 226

1 A At the time.
 2 Q At the time she actually left Williamson
 3 Medical Center, do you know if she was short of
 4 breath?
 5 A I do not know. I was not there when she
 6 left Williamson Medical Center.
 7 Q When you were at bedside that morning, was
 8 she short of breath?
 9 A I don't remember such.
 10 Q If you had seen signs or symptoms consistent
 11 with the shortness of breath, would you have brought
 12 that to the attention of the hospitalist,
 13 Dr. Benson?
 14 A I spent almost no time with her. I was
 15 still so tired. I was just there to visit with
 16 Dr. Benson to see what -- if anything changed and
 17 then kiss her and go home. So I really didn't spend
 18 much time with -- I mean, less than a couple of
 19 minutes with her.
 20 Q What is -- from a layperson, what would you
 21 see in a patient to give you the impression she was
 22 short of breath?
 23 A Well, they might be breathing rapidly. They
 24 might have labored breathing. You might see them
 25 retracting their lungs or their shoulders trying to

Page 227

1 get air in, or, now, if you're out of it, then you
 2 just -- when people start -- stop breathing, they
 3 get hypoxic and they're not -- there's no effort at
 4 all.
 5 Q We're just talking about of shortness of
 6 breath. We'll say hypoxia.
 7 A A normal person, when they get short of
 8 breath, usually there's some labored breathing,
 9 rapid breathing, sometimes shallow rapid breathing,
 10 retraction of ribs, shoulders, but it varies.
 11 Q Sure. If you had seen any of those things
 12 that were concerning to you about your mother when
 13 you were with her on the morning of June 11, 2016,
 14 isn't it true you probably would remember that being
 15 present?
 16 A I probably would have.
 17 Q And you probably would have voiced that
 18 concern to Dr. Benson?
 19 A If I had noticed such, I probably would
 20 have, yes, sir.
 21 Q Is it then fair to conclude that you did not
 22 see any objective signs of shortness of breath when
 23 you were with your mother that morning?
 24 MR. LEMON: Object to form.
 25 THE WITNESS: I didn't look for any

Page 228

1 such form -- any -- there was nothing grossly
 2 obvious to me, at least in my -- as a -- close to a
 3 layperson being a radiologist, I did not see
 4 anything. That's -- but, again, I wasn't evaluating
 5 her for such because I had been told everything was
 6 perfect, everything was ready to go. I just kissed
 7 her on the cheek and said, I will see you later
 8 today, Mom, love you, and that's it.
 9 BY MR. ESSARY:
 10 Q My question was a little more defined. Can
 11 we then conclude that you did not see anything to
 12 give you the impression that she was experiencing
 13 shortness of breath when you were with her that
 14 morning?
 15 A I can say --
 16 MR. LEMON: Same objection.
 17 THE WITNESS: I'm sorry.
 18 MR. LEMON: Go ahead.
 19 THE WITNESS: I can say that I spent
 20 almost no time with her and wasn't evaluating her at
 21 all for a medical condition. I was just there to
 22 hear from Dr. Benson and say I love her and tell her
 23 I would see her later today.
 24 BY MR. ESSARY:
 25 Q I think don't think that's responsive to my

Page 229

1 question.
 2 A Again, I still didn't evaluate her.
 3 Q I'm not asking if you evaluated her. I'm
 4 just simply saying, as a, let's say, lay person, if
 5 you had seen these things that concerned you, would
 6 you have told Dr. Benson you said you --
 7 A If I had seen them.
 8 Q Yes.
 9 A But, again, I was very tired and was there
 10 just to listen and make sure everything was fine
 11 with her.
 12 Q Did you ask Dr. Benson any questions that
 13 morning?
 14 A I did.
 15 Q What did you ask him?
 16 A About the GI issues of blood, which he said
 17 he was going to take care of with the -- what kind
 18 of -- abdominal discomfort she -- whatever the
 19 abdominal issues. He said they were going to take
 20 care of with medications.
 21 Q What else did you ask him?
 22 A I don't remember anything else.
 23 Q How much time did you spend with him that
 24 day?
 25 A I do not know.

(Pages 226 to 229)

1 Q When you were with Dr. Benson that morning
2 and other mornings, did he seem approachable with
3 any concerns or questions that you had?
4 A Yes, sir.
5 Q Did he seem responsive to questions that you
6 put to him?
7 A For most questions.
8 Q Why do you hesitate?
9 A Because when I questioned some of the workup
10 GI-wise, he didn't want to -- he seemed a little bit
11 not wanting to get in the middle or give
12 recommendations. He just wanted to defer to the
13 hospitalist.
14 Q For example, when you asked him about other
15 specialists' care, he seemed to reflect or defer
16 back to them on that?
17 A The only one I remember was that one in
18 particular.
19 Q The gastroenterologist?
20 A Yeah.
21 Q Otherwise, when you would ask him about
22 general conditions, general medical conditions about
23 your mother, did he seem responsive?
24 A Yes, sir.
25 Q Seemed generally concerned about your

1 A The history said abdominal pain and
2 vomiting.
3 Q Was that a study you requested?
4 A No, sir. I was not in the hospital when it
5 was ordered. I believe the abdominal film was
6 ordered by Dr. Fadwa and the chest x-ray had
7 Dr. Benson's name on it, if I remember correctly.
8 Q And it's your testimony today that you did
9 not request the chest x-ray?
10 A Yes. That's correct.
11 Q Now, on the morning of discharge, did you
12 have any discussions with any other hospital staff
13 members about your mother's impending transfer to
14 Somerfield?
15 A I don't remember at this time any other.
16 Q Either social worker, case manager or
17 anybody else?
18 A I don't remember such.
19 Q Is it true that you knew she was being
20 transferred to Somerfield?
21 A Yes, sir.
22 Q You knew she was being transferred to
23 Somerfield on the morning of June 11, 2016?
24 A I knew she was being transferred that day.
25 I didn't know when.

1 mother?
2 A I don't know how to judge that. I mean, he
3 didn't seem callous.
4 Q Well, the absence of callousness, does that
5 give you the impression that he appeared generally
6 concerned about your mother's condition?
7 A I -- it wasn't like the nurse who said, if
8 she was a DNR, I wouldn't walk in the room. It
9 wasn't anything like that. He was very pleasant and
10 available. But in terms of if he cared, I can't --
11 I didn't have enough discussions in-depth to
12 perceive that.
13 Q Sure. Well, we can rule out the negatives.
14 He didn't seem callous. He didn't seem dismissive
15 of you or your mother; is that fair?
16 A He didn't seem dismissive of me. I don't
17 know about my mother.
18 Q Well, why was the chest x-ray done that
19 morning?
20 A Well, the history said hypoxia.
21 Q Is it something you requested, the chest
22 x-ray?
23 A No, sir. I was not -- I was not in the
24 hospital from 3:00 to, say, 8:00.
25 Q Why was the abdominal film done?

1 Q You didn't know exactly what time?
2 A Yes, sir.
3 Q Did you know she was being transferred to
4 Somerfield by ambulance?
5 A I didn't know how she was being transferred,
6 but I wasn't drive -- they wouldn't let me drive
7 her.
8 Q You presumed it would be by ambulance?
9 A I didn't know -- I never thought about it,
10 but I don't think there was any other options. I
11 didn't know if they had any other kind of transport
12 system.
13 Q It doesn't surprise you that she was
14 transferred or transported from Williamson Medical
15 Center to Somerfield by ambulance, does it?
16 A It doesn't surprise me.
17 Q Did you ask anyone how she would get to
18 Somerfield?
19 A No. I asked if we could take her and they
20 told me we could not, but I didn't ask how. It was
21 me, I guess, at the time.
22 Q From your observations of her, let's say, on
23 the 10th of June, even the 9th of June, leading up
24 to the transfer of discharge, how would you compare
25 her condition from your observations and

Page 234

1 interactions with her to the time of admission?
 2 A She was still severely delirious.
 3 Q Delirious meaning not of right mental
 4 capacities?
 5 A Yes, sir.
 6 Q What else?
 7 A I mean, just agitated, moving around a lot,
 8 seeming uncomfortable, just not acting anything like
 9 her.
 10 Q Her being?
 11 A Her baseline from June whatever, 1st, or so,
 12 or the end of the month prior.
 13 Q Okay. Again, this baseline we keep talking
 14 about is before she had this acute event that led
 15 her to the walk-in clinic and then ultimate
 16 admission to --
 17 A Right.
 18 Q -- Williamson Medical Center. How would you
 19 compare her condition on June 10 and the morning of
 20 June 11, when you saw her, to her condition when she
 21 was in the emergency department and then the first
 22 night at the hospital?
 23 A Her lab values were markedly improved, but
 24 in terms of her mentation, it might have been
 25 improved slightly, but certainly not markedly

Page 235

1 improved.
 2 Q Not normal or baseline?
 3 A No, not normal or baseline. I wasn't -- I
 4 wasn't hoping for normal. I was just hoping for
 5 getting close to baseline.
 6 Q And you understood that since her mentation
 7 or mental function was not, quote, back to baseline,
 8 end quote, that's the primary reason she was going
 9 to a rehab facility?
 10 A Well, because she wouldn't be able to -- I
 11 mean, prior to her admission, she was able to pretty
 12 much be independent other than us buying, you know,
 13 the food and put it in the refrigerator for her to
 14 make and everything, she was independent. At that
 15 moment, I had requested physical therapy come see
 16 her while she was in the hospital so we could keep
 17 up with her.
 18 And so they had someone come, I think, once
 19 or twice, maybe, and they did limited stuff. But
 20 she was not -- I didn't -- we tried to get her to
 21 sit up and she wouldn't -- she would sit in a chair
 22 for a while, but there was no way she was walking
 23 again the way she was at the time.
 24 Q As a matter of fact, during the admission,
 25 as you got closer to the time of transfer, she was

Page 236

1 able to get out of bed and sit in a chair for a
 2 period of time?
 3 A We were able to get her into a chair.
 4 Q True?
 5 A She didn't do it on her own, no. We had to
 6 -- we had to get her -- we had to place her in the
 7 chair.
 8 Q Okay. Let me ask the question a different
 9 way. I didn't say she was doing it independently.
 10 As she progressed towards transfer, slash,
 11 discharge, your mother was able to get out of bed
 12 and sit in a chair with assistance?
 13 A With assistance not only to get in the
 14 chair, but assistance to stay in the chair because
 15 she would slide out or fall out.
 16 Q Was that an improvement in her condition
 17 from when she first arrived at Williamson Medical
 18 Center?
 19 A When she first arrived at Williamson --
 20 well, the night before we took her in, that's how
 21 she was. You could sit her up, but it was almost
 22 like a doll. It would sort of flop back. And
 23 that's what she was still doing.
 24 Q So that's not an improvement?
 25 A It wasn't an improvement, but I wouldn't say

Page 237

1 it was worse.
 2 Q When was she first able to get out of bed
 3 and sit in a chair while a patient at Williamson
 4 Medical Center even with assistance?
 5 A When was she able or when was it done?
 6 Q When was it first -- when was she first able
 7 to do so?
 8 A Well, she would have been -- I mean, since
 9 where physics -- I'm physically carrying her to the
 10 chair with help of -- we could have done such on the
 11 first day if we wanted to. She's capable of being
 12 carried and placed in a chair as long as we make
 13 sure she doesn't fall out of the chair.
 14 Q At any time during the hospitalization at
 15 Williamson Medical Center, was she able to sit on a
 16 bedside commode?
 17 A We tried that at least once and with some
 18 assistance, she stayed there for a short -- she's
 19 able to stay there for a short time.
 20 Q But only with assistance?
 21 A I believe with assistance.
 22 Q Meaning holding her up?
 23 A We had to hold her. The main fear was not
 24 holding her up, but more holding her so she doesn't
 25 fall into the ground.

(Pages 234 to 237)

1 Q Why was she -- why would she -- why did she
2 have the risk of falling on the ground?

3 A Because she was still delirious and not with
4 it.

5 Q At any time during her admission to
6 Williamson Medical Center, was she able to
7 communicate competently or with any of her
8 providers?

9 A There were -- there were times she was more
10 with it than at other times. But still, I mean,
11 better than she was when she was first admitted, but
12 it would be just for short, short periods of time
13 you could have a conversation and you thought you
14 got through and she understood and made sense, you
15 thought. And then moments later, you weren't sure
16 because something was just not clicking.

17 Q And that waxing and waning of mentation of
18 being aware and able to communicate, did that even
19 predate the admission?

20 A No. It pre- -- the evening before we
21 brought her in, it wasn't so much waxing. It was
22 just waning. It was just --

23 Q She was wholly unable to communicate?

24 A Well, she wasn't listening to me, nor even
25 Carol. She usually listens to my wife.

1 Q But as she got into the hospital, it seemed
2 to be -- she seemed at least to have periods where
3 she could communicate, but they were short periods?

4 A They were short periods.

5 Q So that's a true statement I just made?

6 A Well, the evening before she came in, she
7 would listen to us in terms of, like, Mom, sit up,
8 and she would sit up for a little short while and
9 then she would just lay back in the bed. So she
10 would understand us for a short -- so she probably
11 did do it, but it was more frustrating when it was
12 just the two of us than having someone else in terms
13 of helping us.

14 Q So we know you were there at the hospital on
15 the morning of June 11, 2016. You left to go home?

16 A Yes, sir. Well, yeah.

17 Q And when did you next see your mother?

18 A To come in for rounds by 8:00 a.m.

19 Q No. After you leave the hospital that
20 morning. I'm sorry. After you saw Dr. Benson and
21 then you left the hospital, and you knew she was
22 going to be transferred to Somerfield, when did you
23 next see her after she left Williamson Medical
24 Center?

25 A Oh, that afternoon. Or late, late morning

1 or early afternoon, but I think I went home to take
2 care of the dogs and I think I might have fallen
3 asleep.

4 Q When you next saw your mother, she was at
5 Somerfield?

6 A Yes, sir.

7 Q And have you -- when you looked at the
8 records back in 2016 or 2017, whenever it was, or
9 even up until today, do you have an understanding as
10 to what happened after you left the hospital that
11 morning and before your mother left Williamson
12 Medical Center, if her condition got better, got
13 worse, stayed the same?

14 A Prior to her leaving Williamson, I don't
15 know of anything. I don't know. I don't remember
16 anything.

17 Q Looking back at the records -- you have
18 mentioned this several times -- you said that you
19 were unaware of some things that happened while you
20 were gone to take your wife to the airport.

21 A Yes, sir.

22 Q What are those things that you believe
23 happened while you were gone to take your wife to
24 the airport?

25 A She developed abdominal pain and was

1 vomiting. And she became hypoxic.

2 Q And what do you know about the development
3 or onset of abdominal pain while you were gone?

4 A How or what do I know?

5 Q What do you know about it?

6 A All I know is that I got, again, from the
7 medical portal, an email stating there's new records
8 to evaluate if you wanted. So opened it up and I
9 saw a report from an abdominal film ordered around
10 4:00 or so in the morning, and the history was
11 abdominal pain, vomiting. Done the early morning
12 prior to her discharge.

13 Q And do you know if that was a new onset or
14 was that the reason just inputted as a follow-up --

15 A Oh, I knew it was not present prior to my
16 leaving the hospital at 3:00 in the morning, nor was
17 it present the day prior. So I knew that much.

18 Q Okay. It may be an inartful question, but,
19 you know, x-rays can be taken serially to see if a
20 patient improves, true, sir?

21 A They can.

22 Q With the initial onset for the reason for
23 the first study being done, carry it over to the
24 follow-up studies, have you ever seen that in your
25 practice?

(Pages 238 to 241)

Page 242

1 A I have never seen an abdominal film order
 2 for abdominal pain and vomiting without the patient
 3 having abdominal pain and vomiting, no, sir.
 4 Q In the medical records around the timeframe
 5 of, let's say, midnight until 7:00 a.m. on the
 6 morning of June 11, 2016, was your mother
 7 experiencing new onset of abdominal pain?
 8 A I did not notice any such thing before I
 9 left at 3:00, but I didn't come back --
 10 Q I understand.
 11 A -- prior to -- from 3:00 to 8:00, I was not
 12 there when the exam was ordered. And assumingly it
 13 was ordered at that time because of her developing
 14 abdominal pain and vomiting.
 15 Q That's a presumption you have made?
 16 A That's a presumption I have made based on
 17 the history that was -- for the request by the
 18 physician.
 19 Q What did the -- on the KUB or the abdominal
 20 series taken that morning, what did it show?
 21 A I don't remember that it showed anything
 22 significant. I don't remember.
 23 Q Second thing you identified as a new problem
 24 between the time you left and her discharge -- time
 25 you returned, I'm sorry, was the vomiting?

Page 243

1 A No, sir. The hypoxia.
 2 Q No, sir.
 3 A There was the abdominal pain and vomiting
 4 were one -- were one request.
 5 Q What do you know about vomiting between the
 6 time you left and the time you returned, if
 7 anything?
 8 A I don't know anything.
 9 Q And the hypoxia, I think we have talked
 10 about, but let me make sure. What do you know about
 11 your mother experiencing any problems with hypoxia
 12 from the time you left until the time you returned
 13 on the morning of June 11, 2016?
 14 A I didn't know -- I don't know anything of
 15 it.
 16 Q Did you try to go back and evaluate her
 17 vital signs during that timeframe?
 18 A I'm sorry. When I came back to the hospital
 19 at 8:00 a.m.?
 20 Q No, sir. When you reviewed the records
 21 after her death, did you try and go look at the
 22 vital signs during that window of time?
 23 A No, sir.
 24 Q So, if she did experience hypoxia during
 25 that window of time, you cannot help us figure out

Page 244

1 when or how long or how severe; is that fair?
 2 A No. If you have the records, you might be
 3 able to figure it out.
 4 Q I'm asking you, though.
 5 A No, I don't have them, no, sir.
 6 Q And from your review of the records after
 7 your mother's death, did you identify any new issues
 8 or concerns or problems during that window of time
 9 when you were gone?
 10 A No, sir.
 11 Q When you were reviewing the records after
 12 your mother's death, were you trying to see if her
 13 condition changed after you left?
 14 A No, sir.
 15 Q When you reviewed the records, did you see
 16 that Dr. Benson was the one who prepared the
 17 discharge summary?
 18 A Yes, sir.
 19 Q Was that part of the record or records that
 20 you reviewed last night?
 21 A That was not, no, sir.
 22 Q Dr. Benson's discharge summary was a brief
 23 summary of your mother's, I guess, course while
 24 admitted to Williamson Medical Center. Do you
 25 remember that being true?

Page 245

1 A I don't remember, but that's normally what a
 2 discharge summary is.
 3 Q Have you talked with anyone at Williamson
 4 Medical Center since your mother was transferred to
 5 Somerfield?
 6 A I don't remember talking to anybody, no,
 7 sir.
 8 Q Has anyone told you that your mother was
 9 treated differently?
 10 A I apologize. There is one -- can I go back
 11 one? There is one person I spoke to.
 12 Q Who was that?
 13 A I got a phone call after my mom had passed
 14 away asking me if I had received paperwork on which
 15 I could -- if I wanted her to stay in the hospital
 16 longer -- or wasn't contest the discharge. There
 17 was some nice word for it, if you wanted her to --
 18 if you thought that she wasn't ready to be
 19 discharged and wanted to --
 20 Q Appeal?
 21 A -- that's the word. Sorry. Appeal the
 22 discharge. I said, no, I did not. She said, okay,
 23 we will send that one to you. So that was mailed to
 24 me, to the Tennessee address after. That's the only
 25 person I remember speaking to.

(Pages 242 to 245)

1 Q That was before your mother died?
 2 A No. That was after my mother died.
 3 Q The medical records indicate that you had a
 4 telephone conversation with a case manager on the
 5 morning of discharge around 10:30 that morning where
 6 the case manager called and spoke to you and said
 7 exactly that, you left before we could get you these
 8 documents; we're going to put them in the mail to
 9 you.
 10 A No, sir.
 11 Q It was after --
 12 A Yeah. I have all of the dates written down
 13 somewhere.
 14 Q Where are those dates written down?
 15 A Somewhere. I don't know where. On some
 16 papers somewhere, but it was definitely post- --
 17 post-discharge.
 18 Q Post-discharge, but before your mother died?
 19 A No. Post discharge and mother dying are
 20 almost the same. We're talking six or eight hours.
 21 Q Okay. So it was on the same day?
 22 A No. It was after that day. Within -- I
 23 think it was within a week.
 24 Q The conversation went something along the
 25 lines of, I'm going to send you some paperwork that

1 dealt with some right you would have had to
 2 challenge the appeal of the discharge of your
 3 mother?
 4 A Right. And I thought it was odd receiving
 5 this phone call after she had already died.
 6 Q If you had been told that before you left
 7 the hospital on the morning of June 11, 2016, given
 8 that documentation, would you have appealed the
 9 decision to discharge your mother?
 10 A If I had been given that document and known
 11 she had abdominal pain and was vomiting, yes, I
 12 would have.
 13 Q Well, based on what you knew that morning
 14 from your discussions with Dr. Benson, and if you
 15 had been given that document, would you have
 16 appealed or challenged the discharge?
 17 A Again, if I was given all of her history, I
 18 would have.
 19 Q That's not my question, sir. Based on what
 20 you were told in your discussions with Dr. Benson,
 21 based on your --
 22 A Oh, based on me not being told her actual
 23 history that occurred while I was gone you're
 24 saying?
 25 Q Let me ask --

1 A Excluding me being told that she had new
 2 abdominal pain and vomiting, as well as shortness of
 3 breath?
 4 Q Can I ask the question, please?
 5 A Sure.
 6 Q Based on the universe of knowledge that you
 7 had on the morning of June 11, 2016, based on what
 8 you actually knew, based on what you had been told
 9 by Dr. Benson or the other staff members, if you had
 10 been given that appeal letter that morning, would
 11 you have challenged the dismissal or transfer of
 12 your mother?
 13 A Well, your language that I was given the
 14 universe of information, I would have because then I
 15 would have known she had abdominal pain and
 16 vomiting. So, yes, if I was given the true universe
 17 of knowledge, I would have appealed it, yes, sir.
 18 Q I don't think we're communicating.
 19 Dr. Galuten. It may be my fault.
 20 A Oh, I doubt it.
 21 Q Okay. Based on what you actually knew that
 22 morning about your mother's condition, based on that
 23 universe of information, if you had been given the
 24 appeal letter, would you have challenged your
 25 mother's transfer on the morning of June 11, 2016?

1 A So you're asking, if I was not given the
 2 correct information about her true medical history
 3 up to that date, would I have appealed it without
 4 knowing that there were changes? Is that what
 5 you're asking me, sir?
 6 Q No. That's not at all what I'm asking.
 7 A Okay. Well, then, I don't know how to
 8 answer it.
 9 Q If you can answer the question I'm asking,
 10 because I don't think it's that complicated. You
 11 were told information from Dr. Benson about your
 12 mother's condition that morning, true?
 13 A I was given incomplete information based on
 14 the history, yes, that is correct.
 15 Q Okay.
 16 A I'm sorry, I'm making it difficult for you,
 17 sir.
 18 Q Well, you really are because this is not --
 19 A I apologize.
 20 Q It's not that complicated. The question
 21 simply is: Based on what you knew on the morning of
 22 June 11, 2016, based on what you were told by
 23 Dr. Benson, based on your own observations, based on
 24 that information, if you had been given the appeal
 25 letter that morning, would you have challenged or

(Pages 246 to 249)

Page 250

1 appealed the transfer of your mother on the morning
2 of June 11, 2016?

3 MR. LEMON: And I'm going to object to
4 the form of the question because it's
5 misrepresenting a distinction that he's trying to
6 make here and you're trying to gloss over it, Bryan.
7 And asking him the same thing six times isn't going
8 to generate a different response.

9 MR. ESSARY: That's a speaking
10 objection. And I don't know how you all do it in
11 Georgia, but, here, we don't do that. You can
12 object to the form. If we need to have him step
13 out, we can.

14 He keeps rephrasing the question. It's
15 not that difficult of a question. If you will
16 refuse to answer it directly, that's okay, we move
17 on.

18 BY MR. ESSARY:

19 Q Go ahead, Mr. Galuten.

20 MR. LEMON: Same objection.

21 THE WITNESS: Again, if given all the
22 information that was available when I found out that
23 was in her medical record for the reason for the
24 exams being ordered, I would have objected, if given
25 that information.

Page 252

1 with you?

2 A Well, when the hospitalist said nothing new
3 had happened overnight since you left and everything
4 is the same, everything is fine, then he should have
5 shared such with me.

6 Q He being Dr. Benson?

7 A He the discharging.

8 Q He being Dr. Benson?

9 A Yes, sir.

10 Q Okay. I'm just trying to put a name on the
11 he's and the she's, so when I go back --

12 A Yes, sir.

13 Q -- to read this, I can figure out who you're
14 talking about.

15 Will you agree with me that Dr. Benson did
16 not tell you of these new changes that you
17 interpreted from the record to be abdominal pain,
18 vomiting and hypoxia?

19 A Sir, I did not interpret because that's what
20 was written down for the history, to justify the
21 examination. I'm not interpreting anything. I'm
22 just reading what the ordering physician put down to
23 justify the exam.

24 Q Okay. Let me ask the question a different
25 way; maybe we can move on. Did Dr. Benson tell you

Page 251

1 BY MR. ESSARY:

2 Q I understand that. If you had been given
3 the information that you believe is in the chart the
4 way you interpreted, that her condition changed,
5 that she had hypoxia, that she had vomiting episodes
6 and new onset of abdominal pain, if you had been
7 told that, you're telling us you would have
8 challenged or appealed the transfer to Somerfield;
9 is that what you're telling us?

10 A I'm sorry. You're saying if I had -- the
11 history I interpreted you are saying?

12 Q Yes.

13 A I'm not -- I don't quite understand. Maybe
14 there is a misunderstanding between us. I'm not
15 interpreting it. I was just reading the letters
16 that the physicians put down for the reason for the
17 exam. I'm not -- I don't think -- I'm not reading
18 anything into it.

19 The wording was, I think I read it
20 specifically to you, hypoxia was for one and one was
21 abdominal pain and vomiting. So based on that
22 information, I would have objected, if given that
23 information which was available but not to me at the
24 time.

25 Q And who should have shared that information

Page 253

1 that Ms. -- your mother was experiencing

2 abdominal -- new onset abdominal pain, new onset
3 vomiting and new onset hypoxia while you were gone
4 that morning?

5 A No, sir.

6 Q So you did not know those conditions had
7 developed or that your mother experienced those
8 conditions from the time you left until the time you
9 returned on the morning of June 11, 2016; is that
10 true?

11 A That is correct.

12 Q Well, based on what you did know that
13 morning, did you -- if you had been given this
14 appeal letter to appeal or challenge the transfer of
15 your mother to Somerfield, if you had been given
16 that letter before you left that morning, would you
17 have appealed or challenged the transfer to
18 Somerfield?

19 A Again, I would have appealed if given the
20 full information of her history, yes, sir.

21 Q Okay. But you did not know those three
22 elements?

23 A I was not offered those elements, no, sir.

24 Q And since you did not know those three
25 elements -- that's what I'm trying to set aside --

(Pages 250 to 253)

1 based on what you did know that morning, the actual
2 knowledge that had been shared with you or the scope
3 of what you knew about your mother's condition, if
4 you had been given that appeal letter that morning,
5 would you have challenged the transfer?

6 A I will say it again, it's a hypothetical to
7 me to say that she has no abdominal pain or hypoxia,
8 would you have -- because I know actually that she
9 did have abdominal pain and vomiting and she did
10 have hypoxia based on the physician's orders.

11 So the hypothetical is she didn't have such,
12 would you have challenged? In actuality, she did
13 have such and I would have challenged, yes, sir.

14 Q I think you're creating the hypothetical.
15 But if you had known --

16 A No, the hypothetical --

17 Q Let me -- let me --

18 A Okay. I'm sorry. I apologize.

19 Q That's all right. You're creating a
20 hypothetical, that if you had been told certain
21 things, you would have done things differently.
22 That's the hypothetical that you're applying to my
23 question that's not part of my question. I'm just
24 trying to get, based on what you actually knew that
25 morning, what you would have done.

1 A Okay. I'm a slow country fellow, but I
2 believe the hypothetical is, acting upon information
3 that didn't exist, such as not having abdominal pain
4 and vomiting and not having hypoxia, but in
5 actuality, she had hypoxia and abdominal pain and
6 vomiting based on the physician's request. So based
7 on the actual history and physical findings, I would
8 have appealed.

9 Q Because of the abdominal pain, vomiting and
10 hypoxia that you saw noted in the record?

11 A Yes, sir. That was in the medical record.

12 Q And you believe with those things being
13 present, she was not an appropriate patient to be
14 transferred to Somerfield?

15 A Yes, sir.

16 Q And why not?

17 A Because she had new abdominal pain and
18 vomiting based on the request. So it needs to be
19 evaluated.

20 Q Okay. Do you know if Dr. Benson evaluated
21 those issues and decided that she still was an
22 appropriate patient for transfer?

23 A I do not know if he evaluated. I know he
24 did not order that exam.

25 Q Which exam?

1 A The abdominal film.

2 Q My question was: Do you believe he
3 evaluated that exam and considered that in his
4 decision whether to allow her to be transferred to
5 Somerfield?

6 A I have no idea. He did not tell me such,
7 nor did he tell me the history of the episode of
8 vomiting or abdominal pain during that evening.
9 That was not relayed to me at all, sir. I would
10 have gladly discussed it with him if he had brought
11 it up.

12 Q During the admission to Williamson Medical
13 Center, there were various tests ordered. We talked
14 about some of them already, but I want to make sure
15 that I haven't missed anything that you were aware
16 of, okay, sir?

17 A Yes, sir.

18 Q There were a number of chest x-rays done?

19 A While she was a patient you mean?

20 Q Yes.

21 A Yes, sir.

22 Q Various -- more than one abdominal x-ray,
23 KUBs?

24 A I believe so.

25 Q A CT scan, which we have talked about.

1 A Once. Yeah, one CT scan.

2 Q That's why it's a CT scan was done?

3 A Yes. Well, a CT of the abdomen and pelvis.

4 Q Were you aware that there was an ultrasound
5 done, abdominal ultrasound done?

6 A I was aware, yes.

7 Q Evaluating her gallbladder?

8 A Yes, sir.

9 Q Were you aware that there were knee x-rays
10 done to evaluate her osteoarthritis?

11 A I was aware.

12 Q We talked about the PICC line being placed,
13 didn't we?

14 A Yes, sir.

15 Q And we talked about various labs being done
16 from admission all the way through to the morning of
17 her discharge?

18 A There were various labs done.

19 Q Various medications given to her during the
20 admission?

21 A Yes, sir. I wasn't -- I don't know what
22 medication, but, yes.

23 Q Sure. But you know, even though you don't
24 know the frequency or the amount or the actual type,
25 you know she received medications?

(Pages 254 to 257)

Page 258

1 A Yes, sir.
 2 Q Consultations performed?
 3 A With referring physicians.
 4 Q Yes.
 5 A Yes, sir.
 6 Q Meaning the hospitalists who were managing
 7 or serving as attending providers, attending
 8 physicians requested subspecialists become involved
 9 in your mother's care?
 10 A Yes, sir.
 11 Q Including -- we talked about the
 12 nephrologist, true?
 13 A Yes, sir.
 14 Q The gastroenterologist?
 15 A Correct.
 16 Q Vascular surgeon?
 17 A Vascular surgeon, yes.
 18 Q Because the vascular surgeon actually placed
 19 the catheter for the dialysis?
 20 A The port, yeah.
 21 Q We know that your mother also received
 22 dialysis during the admission?
 23 A Correct.
 24 Q At least on two different occasions?
 25 A Yes, sir.

Page 259

1 Q Am I missing any substantive treatment that
 2 was provided?
 3 A I can't think of any at this time.
 4 Q A discussion about the PEG tube was delayed
 5 because of the development of the ascites, true?
 6 A Correct.
 7 Q Not withheld, but delayed because of that
 8 potential complication.
 9 A Correct. Well, actually, I apologize. It
 10 was initially delayed, but then on the -- within a
 11 day or two of discharge, Dr. Benson told me that,
 12 quote, you're looking at death here.
 13 The fact that she pulled out her feeding
 14 tube one evening -- we placed a feeding tube into
 15 her once via her nose -- and one night she got her
 16 hands loose and she pulled it out. So I had asked
 17 him about putting it back, and he said, I will not
 18 replace it. In fact, not only will I not replace
 19 it, but I'm not going to put a PEG tube in because
 20 if you put a PEG tube in and she pulls it out, she
 21 will bleed to death and that will be ugly.
 22 So, initially, it was a deferment and then a
 23 day or so prior to her being discharged, he said he
 24 refused to do it because she would pull it out and
 25 bleed to death.

Page 260

1 And then -- then he went on and told me that
 2 it's not unusual for elderly patients to get more
 3 delirious at night, sundowning, and that's what
 4 happens to her. So it's no big deal. I go, well,
 5 then, if that's what happened to her and that's why
 6 she pulled it out, why don't we replace it? He
 7 said, because if she -- because eventually she will
 8 pull it out again. If she pulls out the PEG, she
 9 will, quote, bleed to death and that will be very
 10 ugly.
 11 So initially deferred and then he said he
 12 was not going to do it even if she got better at
 13 Somerfield.
 14 Q He would not be the one to decide whether to
 15 proceed with the PEG tube after discharge anyway,
 16 would he?
 17 A Well, he would have been since he was taking
 18 care of her then. The initial -- the initial goal
 19 was she would get better and then improve enough so
 20 we can put in a permanent PEG tube, and he would do
 21 such.
 22 Q Dr. Benson would not be the one?
 23 A Oh, no, no, we're talking Dr. -- I'm sorry,
 24 not Dr. Benson. We're talking about Davenport. I
 25 apologize. It was Davenport who said, this is

Page 261

1 death. I apologize.
 2 Q Let's back up because I was a little
 3 dumbfounded.
 4 A Oh, no, you weren't -- you weren't -- I was
 5 wrong. If I said Benson, I meant Davenport. I
 6 apologize.
 7 Q Okay. So when you were talking about
 8 Dr. Benson discussing with you the, I guess, reasons
 9 not to place a PEG tube, you really meant
 10 Dr. Davenport, the gastroenterologist?
 11 A When you mentioned the PEG tube was being
 12 deferred until later, I said -- I went back and said
 13 it wasn't deferred. Dr. Davenport, not Benson, said
 14 he would not do it because if she pulls that out,
 15 she will bleed like a -- and it will be so ugly or
 16 whatever and she will bleed out. I apologize if I
 17 said Benson.
 18 Q One thing that we did leave off the list of
 19 interventions was the feeding tube that was placed
 20 initially.
 21 A Yeah.
 22 MR. ESSARY: Let's take a break and
 23 then we will talk about the Somerfield admission.
 24 VIDEOGRAPHER: We're going off the
 25 record. The time on the monitor is 3:35 p.m.

(Pages 258 to 261)

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